

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

|                           |   |                   |
|---------------------------|---|-------------------|
| CATE STREET CAPITAL INC., | ) |                   |
| et al.,                   | ) |                   |
|                           | ) |                   |
| Plaintiffs                | ) |                   |
|                           | ) |                   |
| v.                        | ) | 1:14-cv-00200-JDL |
|                           | ) |                   |
| INDUSTRY INTELLIGENCE     | ) |                   |
| INC., et al.,             | ) |                   |
|                           | ) |                   |
| Defendants                | ) |                   |

**RECOMMENDED DECISION**

This matter is before the Court on Defendants' Motion to Dismiss (pursuant to Federal Rule of Civil Procedure 12(b)(6)) (ECF No. 12), and Defendants' Special Motion to Dismiss Pursuant to 14 M.R.S. § 556 (the Maine anti-SLAPP statute). (ECF No. 13.)

Plaintiff commenced this action with the filing of a complaint on May 13, 2014. (ECF No. 1.) Defendants filed the pending motions to dismiss in response to the complaint. After the filing of the motions to dismiss, Plaintiff filed a Motion to Amend the complaint. (ECF No. 18.) On October 24, 2014, the Court, without objection from Defendants, granted the Motion to Amend. (ECF No. 33.) In accordance with the Court's order, on October 31, 2014, Plaintiff filed a First Amended Complaint. (ECF No. 34.) Pursuant to the Court's order granting the motion to amend, Defendants must file their responsive pleading to the amended complaint on or before December 1, 2014.

Because Plaintiff's amended complaint is now the operative pleading, Defendants' response to the original complaint (i.e., the pending motions to dismiss) is moot. That is, the Defendants' motions were filed in response to a pleading that no longer governs the future course

of this action. To the extent that Defendants believe that dismissal of Plaintiff's amended complaint is warranted, Defendants will presumably move for dismissal either in their responsive pleading or at some future point in the case.

Based on the foregoing analysis, therefore, the recommendation is that the Court moot Defendants' Motion to Dismiss (ECF No. 12) and Defendants' Special Motion to Dismiss Pursuant to 14 M.R.S. § 556 (Maine's anti-SLAPP statute).

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within fourteen (14) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ John C. Nivison  
U.S. Magistrate Judge

Dated this 17<sup>th</sup> day of November, 2014.